IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4932 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

ARVINDBHAI JETHABHAI PARMAR

Versus

COMISSIONER OF POLICE

---

Appearance:

1. Special Civil Application No. 4932 of 2002

MR NM KAPADIA for Petitioner No. 1

MR AY KOGJE Ld. AGP for Respondent No. 1-3

---

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 22/07/2002

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, dated 10.4.2002 in exercise of powers vested under him by Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

2. The petitioner has been branded as bootlegger

within the meaning of sec. 2(b) of the PASA Act and the subjective satisfaction recorded by the detaining authority on the strength of the registration of a criminal case registered with DCB Police Station for the offence punishable under sec. 66(1)(B), 65(E)(A) and 81 of the Bombay Prohibition Act on 5.4.2002.

3. In this solitary case registered against the petitioner, a Maruti Fronti car was intercepted by the Police from which approximately 2152 bottles of Indian made foreign liquor was seized. One Hero-Honda motor-cycle and two mobile phones found were also seized by the police. The Sponsoring authority was able to record the statements of two independent witnesses who have narrated the nature of the activities adopted by the petitioner as bootlegger with his accomplice. So, on the strength of this documents, subjective satisfaction has been recorded by the detaining authority by exercising powers under Sec.3 of the PASA Act and the petitioner was detained by the impugned order. Statements of these two unnamed witnesses are recorded on 6.4.2002 and 7.4.2002 respectively and both these statements are verified by the detaining authority on 9.4.2002 and on the next day i.e. 10.4.2002 the order of detention has been passed.

4. The order of detention has been challenged on number of grounds, however, during the course of oral submissions, Mr Kapadia learned counsel for the petitioner has concentrated his arguments mainly on two grounds. The first ground argued by Mr. Kapadia is that the representation made by the petitioner to the State Government has not been considered and till date the same has remained unresponded, so the continued detention of the petitioner should be turned down solely on this ground. During the course of submissions, Mr Kapadia has placed two documents before this Court. The same are taken on record. The copy of the written representation sent to the State Government namely Secretary, Home Department, Sachivalaya, Gandhinagar dated 3.5.2002 is at Annexure-D (page 26). Undisputedly, this representation had reached to the State Government and on receipt of the representation, the Under Secretary - a responsible officer of the Home Department had intimated the detaining authority vide letter dated 7.5.2002 that appropriate steps qua the documents demanded by the petitioner be taken by the detaining authority. Copy of this letter was also sent to the petitioner and the same was received by the detenu on 15.5.2002 through the Jail Authority. It is submitted by Mr. Kapadia that thereafter the petitioner was anxiously waiting for the copies of the documents demanded and also appropriate

orders of revocation of the order of detention from the State Government. The second document tendered by Mr. Kapadia today is the reply received by the detenu dated 16.5.2002 from the Police Commissioner, Surat City wherein he has stated that the documents demanded by the petitioner are not relevant and the authority while passing the order of detention has not placed its reliance on any of the documents demanded by the petitioner. The Court is satisfied that the reply sent to the petitioner by the Police Commissioner, Surat city is appropriate and correct response to the demand, however, it seems that though the copy of this reply was also sent to the State Government, as such an endorsement is found at the bottom of the document, the State Government had not taken any further steps or action. The State Government was supposed to respond to the request of the petitioner for revocation of the order of detention, as the petitioner was arrested in a solitary criminal case of the offence punishable under the Bombay Prohibition Act. The act of not responding to the request of revocation is non-compliance of the requirement under Article 22(5) of the Constitution of India.

5. In response of the query raised by the court, Ld. AGP Mr AY Kogje after referring the file of the department,available with him, has submitted that except the reply sent to the petitioner on 5.5.2002 i.e. copy of the letter addressed to the Police Commissioner, Surat City, no further response has been given by the State Government to the detenu and he has not been intimated after receipt of the letter from the Police Commissioner as to what has happened to his request for revocation.

6. Ld. Counsel Mr. Kapadia has placed reliance on a decision in the case of Smt. Shalini Soni vs. Union of India and Ors., reported in AIR 1981 SC p. 431, wherein the Apex Court has observed that the authority is supposed to consider and deal with the representation, if made for the purpose, in view of Article 22(5) of the Constitution of India. It was open for the State Government to reject the request for revocation, but it seems that in the present case, the State Government has not applied its mind qua the basic demand of the detenu and it is rightly argued that till the date of filing of this petition or even after the date of the service of Rule, no formal orders are passed by the State Government qua the request for revocation of the detention order, on the representation dated 3.5.2002. The Court does not think it necessary to reproduce the relevant para-4 & 6

of the above cited decision and the Court is satisfied that non-response by the State Government is in violation of the assurance flowing from Article 22(5) of the Constitution of India. In reference to Article 19 of the Constitution of India, the Courts have a duty to rigidly insist that the preventive detention procedures are fair and they are strictly observed. A breach of procedural imperative must lead to the release of the detenu, as observed in para-4 of the above cited decision. So, without discussing the other points argued by Mr. Kapadia, the court is inclined to allow this petition on this sole ground and the continued detention shall have to be quashed.

7. In the result, this petition is allowed. The impugned order of detention dated 10.4.2002 passed by Police Commissioner, Surat City, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)

mandora/